

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAJZER GRYSZTAJN,

X

Plaintiff,

JUDGE CEDARBAUM

Notice of Motion

-against-

Case No.: 07CV6285

THE CITY OF NEW YORK, DETECTIVE MICHAEL
WILLIAMS Shield # 06409, SECURITY OFFICER
WILSON VEGA, HWA INC.,

Defendants.

X

PLEASE TAKE NOTICE, that the within Plaintiff LAJZER GRYSZTAJN, hereby moves this Court to strike the Answer of Defendant City of New York and officer defendants and/or preclude defendant from offering testimony or documents at trial, and for such other and further relief as this Court may deem just and proper.

DATED: Brooklyn, New York
June 3, 2008

Respectfully Submitted:

LAW OFFICE OF DAVID A. ZELMAN

David A. Zelman, Esq.
612 Eastern Parkway
Brooklyn, New York 11225
(718) 604-3072

Via fax: 212 788 9776
Joyce Campbell Priveterre, ESQ.
Assistant Corporation Counsel

New York City Law Department
100 Church Street
New York, New York 10007

Via fax: 212 267-5916
Robert N. Dunn Esq.
Lester Schwab Katz & Dwyer, LLP
120 Broadway
New York, New York 10271

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAJZER GRYSZTAJN,

X

Plaintiff,

JUDGE CEDARBAUM

Affirmation in Support

-against-

Case No.: 07CV6285

THE CITY OF NEW YORK, DETECTIVE MICHAEL
WILLIAMS Shield # 06409, SECURITY OFFICER
WILSON VEGA, HWA INC.,

Defendants.

X

DAVID A. ZELMAN, Esq., an attorney duly licensed to practice law before the Southern District of New York, being duly sworn deposes and says, upon information and belief, as follows:

1. I am the attorney for the within plaintiff, and as such I am fully familiar with all the facts and circumstances of this case. This is a civil rights action in which the plaintiff, Mr. LAJZER GRYSZTAJN seeks redress, pursuant to State law and 42 U.S.C. Section 1983, 1988 for an unlawful arrest, a 14 hour detention and a prosecution which resulted in a dismissal. Plaintiff brings causes of action sounding in false arrest and malicious prosecution.
2. I submit this affirmation in support of plaintiff's motion to strike the Answer of defendants CITY OF NEW YORK and DETECTIVE MICHAEL WILLIAMS Shield # 06409 ("City defendants") and/or preclude City defendants from offering

testimony or documents at trial.

3. City defendants have failed to timely provide discovery in this matter. As of June 3, 2008 City defendants have not yet produced a response to plaintiff's Document Demands served in October of 2007. Nor have City defendants produced a copy of a demanded two page bulletin which Detective WILLIAMS testified at his deposition was in his possession. In addition, there is an outstanding request for an Internal Affairs File of the plaintiff and disciplinary history of the officer defendant. Your Honor ruled that these and other documents would need to be produced by June 3, 2008 at the latest. This has not occurred. Nor have City defendants sought an extension of time to respond to discovery demands or even explained the failure to provide discovery prior to the Court imposed June 3, 2008 final discovery deadline.
4. Plaintiff's counsel contacted defense counsel via fax on February 20, 2008 and May 22, 2008 and detailed categories of discovery which had not yet been produced. Defense counsel has provided no written response to either letter to date. The February 20, 2008 and May 22, 2008 letters are annexed hereto as Exhibit "A".
5. Many Courts which discuss the ramifications of failing to provide discovery turn to the willfulness or lack thereof by the party failing to produce discovery. Defendants' willfulness in failing to provide discovery can be inferred from the fact that since plaintiff served discovery demands in October 2007, defendant has not provided any response to these demands discovery or sought an extension to do so. This is despite

the fact that a fax was sent to defense counsel regarding this on February 20, 2008. In addition, your Honor ordered City defendants to provide a response by June 3, 2008.

6. Your Honor's attention is respectfully directed to Ocello v. City of New York, 2008 U.S. Dist. LEXIS 22336 (EDNY, 2008); Attard v. City of New York, 2008 U.S. Dist. LEXIS 36452 (EDNY, 2008); Wahhab v. City of New York, 2003 U.S. Dist. LEXIS 13871 (SDNY, 2003) for a discussion of the ramifications of a failure to provide discovery.
7. Therefore, in keeping with the Court imposed deadline of June 3, 2008, the undersigned requests that the defendants CITY OF NEW YORK and DETECTIVE MICHAEL WILLIAMS Answer be stricken for a pattern and history of failing to produce discovery in this matter and/or preclude defendant from offering testimony and/or documents at the trial of this action.

WHEREFORE, the undersigned requests that the foregoing motion be granted and requests such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
June 3, 2008

LAW OFFICE OF DAVID A. ZELMAN



By: **David A. Zelman, Esq.**

Attorney for LAJZER GRYNSTAJN

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Brooklyn, New York 11225

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Via fax: 212 788 9776

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Robert N. Dunn Esq.

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120 Broadway

New York, New York 10271

EXHIBIT A

David A. Zelman, Esq.
612 Eastern Parkway
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11225
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February 20, 2007

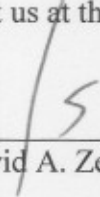
Via First Class mail and Fax: 212 788 9776
Joyce Campbell, Esq.
Corporation Counsel
100 Church St
New York, NY 10007:

Re: Lajzer Grynsztajn v. The City of New York, et al.
Civil Case No: 07 CV 6285

Dear Ms. Campbell:

Please be advised that our office has not received a response to our document demands for the above case. Please expedite the response and mail it to our office as soon as possible.

Should there be any questions, please feel free to contact us at the above number.



David A. Zelman, Esq.

David A. Zelman, Esq.
612 Eastern Parkway
Brooklyn, New York 11225
Tel: (718) 604-3072
Fax: (718) 604-3074

May 22, 2008

Via fax: 212 788 9776
Joyce Campbell, Esq.
Assistant Corporation Counsel
100 Church St
New York, NY 10007

Re: Grynsztajn v. City of New York et. al
Civ No.: 07 CV 6285 (MGC) (GWC)

Dear Ms. Campbell:

At the deposition of your client this week, it became apparent that there are several categories of discovery which have yet to be produced in this action. Namely, your client testified that he reviewed a two page "Bulletin" published by the NYPD which addressed shield issues. This documents, as well as any other related documents in the possession of your clients, is demanded.

In addition, it became clear at the deposition that there is an Internal Affairs file relating to the above plaintiff. Please produce a copy of the entire file or a privilege log for same.

Kindly produce any and all documents which address any policy or practice of arresting persons in possession of a NYPD detective style shield.

Thank-you for your anticipated cooperation.

Very Truly Yours,


David Zelman, Esq.

Via Fax
CC: Robert Dunn, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAJZER GRYSZTAJN,

X

Plaintiff,

-against-

Case No.: 07CV6285

THE CITY OF NEW YORK, DETECTIVE MICHAEL
WILLIAMS Shield # 06409, SECURITY OFFICER
WILSON VEGA, HWA INC.,

Defendants.

X

NOTICE OF MOTION

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